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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,670

01/13/2006

Hiroyuki Takahashi

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07/09/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/535,670	<b>Applicant(s)</b> TAKAHASHI, HIROYUKI	
	<b>Examiner</b> ERIK KASHNIKOW	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/19/2005, 09/27/2007, 06/10/2008</u> .                      | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: There are numerous "Translators comments" present throughout the specification which can often lead to confusion, especially when the "translators comment" contradicts the specification.

Appropriate correction is required.

2. The use of the trademarks EVAL™ and ADMER® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 8 recites the limitation "the flange" in the last line. There is insufficient antecedent basis for this limitation in the claim. Examiner notes that it is an

independent claim, however the word "the" indicates the flange had been mentioned previously. Examiner suggest changing the word "the" to "a".

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Le Du (US 2002/0034649).

8. In regards to claim 1 Le Du teaches a sheet which comprises a substrate layer, a middle layer which corresponds to Applicant's preferred embodiment for the cohesive failure layer, and a polypropylene layer which corresponds to applicants non-cohesive failure resin layer. Le Du also teaches that the non-cohesive failure resin layer have a thickness of 10  $\mu\text{m}$  (paragraph 0087).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Le Du (US 2002/0034649) in view of Mitsui (JP-11268208) with Ishibashi et al. (US 4,487,871).

11. Le Du teaches a multilayer sheet that can be used for lids of articles as taught by applicants, however they are silent regarding the substrate being a polyolefin, as well as a container consisting of the sheet of the material.

12. In regards to claim 2 Le Du teaches that this inner most layer comprise a polypropylene which has a melting point higher than that of the cohesive failure layer (Le Du Paragraph 0013). While Le Du is silent regarding the specific melting point it has been shown that absent a showing of criticality with respect to "melting point" (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "melting point" through routine experimentation to values, including those presently claimed in order to achieve "a sheet for use in container which has an easily peelable property". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. In regards to claim 3 Le Du teaches that in the cohesive failure resin layer the polypropylene be present in concentrations of 40-93% and the ethylene polar vinyl compound be present in 5-30% (paragraphs 0042-0045). This is within Applicant's range.

14. In regards to claim 4 Le Du teaches polyvinyl acetate copolymers for use in the cohesive resin layer (0049).

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15. In regards to claim 5 Le Du teaches that the substrate layer may be metallized, it is known in the art that metallized films have excellent gas barrier properties (Ishibashi et al. column 1 16-30). Since this metal would be on both sides it would put a gas barrier layer on the side opposite the substrate layer of the cohesive failure layer.

16. In regards to claims 6 and 7 Le Du shows an embodiment of their invention wherein the sheet is used to form a lid for a container wherein the lid is heat sealed to a flange of the container (Fig. 1B). Le Du teaches that the inside layer of the container is a polypropylene, the same as the inner layer of the sheet used to form the lid (paragraph 0036).

17. While Le Du teaches a multilayer sheet with layers corresponding to Applicant's cohesive and non-cohesive failure resin layers, they are silent regarding the composition of the substrate layer as well as using the sheet to form a container.

18. Mitsui teaches a multilayer film with stable heat sealing nature and easy releaseability (paragraph 0001).

19. In regards to claim 2 Mitsui et al. teach a film which has a substrate layer that can comprise polypropylene or ethylene (Mitsui paragraph 0019).

20. In regards to claim 6 Mitsui et al. teach that the sheet of their invention can be used to form a container and a lid for the container (paragraph 0026).

21. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the film and container of Le Du with the film and container of Mitsui because the film and container of Le Du which has films and packages which are sterilizable and chemically resistant to the greases and acids and solvents that may be

encountered within the scope of these packages (paragraph 0009) would benefit from the excellence in exfoliation interface and easy open nature of the film and container of Mitsui as well as the simplification in production which comes when containers and lids for said containers are made out of the same materials.

22. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Le Du (US 2002/0034649) in view of Mitsui (JP-11268208) and Mihalov et al. (US 6,286,705) with Ishibashi et al. (US 4,487,871).

23. As stated above Le Du and Mitsui et al. teach films and containers which comprise a substrate layer and a cohesive and non-cohesive failure resin layers, however they are silent regarding a flange with a circular cut.

24. Mihalov et al. teach a container and lid which are hermetically sealed to each other through a process involving heat (column 1 lines 19-25).

25. In regards to claim 8 Mihalov et al. teach a recessed area in both the lid and around the outer surface of the flange to help with adhesion (Fig 6 and column 15 lines 30-42).

26. In regards to claim 14, while Mihalov et al. are silent regarding the distance from the recessed portion of which the lid is sealed, they do show the lid sealed past the recessed area in Fig. 6, and it has been found that absent a showing of criticality with respect to "distance past the recessed section" (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "distance past the recessed section" through routine experimentation to values, including those presently claimed in order to achieve "heat sealed easily



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peelable lid". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

27. In regards to claims 9-13 all the limitations have been previously discussed in the above paragraphs.

28. One of ordinary skill in the art at the time of the invention would be motivated to modify the containers of Le Du and Mitsui with the container and lids of Mihalov because the containers and lids of Mihalov offer a highly effective leak tight seal which are less likely to fail when subjected to impacts or pressure gradients (column 17 lines 6-14).

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The X reference in the search report that was not used, Yosomiya et al. (JP 09-066589) could also have been used as a 102 reference in place of Le Du. Ouhadi (US 5,843,577) teaches the cohesive failure resin layer of Applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
Examiner  
Art Unit 1794

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794